



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0290]**

**RIN 1625-AA00**

### **Safety Zone; Creative Day Technologies Mackinac Island Fireworks, Mackinac Island, MI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Straits of Mackinac near Mackinac Island, MI. The temporary safety zone is needed to protect vessels and spectators from the hazards associated with a fireworks show during the Creative Day Technologies Mackinac Island Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Sault Sainte Marie or a designated representative.

**DATES:** This rule is effective from 9:30 p.m. to 10:30 p.m., June 26, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0290 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Onnalee A. Blackledge, Waterways Management, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906-253-2443, email [sssmprevention@uscg.mil](mailto:sssmprevention@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| COTP   | Captain of the Port             |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

## **II. Background, Purpose, and Legal Basis**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of the requested safety zone with sufficient time for a comment period to run before the start of the fireworks display. Thus, delaying this rule to wait for a notice and comment period to run would be impracticable because it would inhibit the Coast Guard’s ability to protect the public from the potential hazards associated with the fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable.

## **III. Legal Authority and Need for Rule**

The legal basis for this final rulemaking is found at 46 U.S.C 70034; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

On June 26th 2019 from 9:30 p.m. through 10:30 p.m., Mackinac Island will have a fireworks display at position 45° 50' 48.44"N, 084° 37' 40.06"W. The maximum sized shell to be used is six inches and requires a temporary safety zone of at least 420 feet. The State of Michigan regulates fireworks displays. This action is only for the temporary safety zone.

The Captain of the Port Sault Sainte Marie has determined that potential hazard associated with fireworks from 9:30 p.m. to 10:30 p.m. on June 26, 2019 will be a safety concern to anyone within a 420-foot radius of the launch site. Such hazards include premature and accidental detonations, falling and burning debris, and collisions among spectator vessels. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the temporary safety zone while the fireworks are being displayed.

#### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from 9:30 p.m. through 10:30 p.m. on June 26, 2019. This rule is necessary to protect the safety of spectators and vessels during the aforementioned display. The temporary safety zone will encompass all U.S. waters of Lake Huron within a 420 feet radius from 45° 50' 48.44"N, 084° 37' 40.06"W. The rule will be enforced to mitigate risks associated with the display.

The duration of the zone is intended to protect the safety of life and property in these navigable waters during the scheduled fireworks display. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the Captain of the Port or a designated representative. The Captain of the Port or a designated representative may be contacted via VHF Channel 16 or at 906-635-3237.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related

to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for this temporary safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact small designated area of Lake Huron near Mackinac Island for 1 hour. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting one hour that will prohibit entry into a designated area. Normally such actions

are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0290 to read as follows:

**§ 165.T09-0290 Safety Zone; Creative Day Technologies Mackinac Island Fireworks, Mackinac Island, MI.**

(a) **Location.** The temporary safety zone will encompass all U.S. navigable waters of Lake Huron within a 420 foot radius of 45° 50' 48.44"N, 084° 37' 40.06"W.

(b) Effective and enforcement period. This regulation is effective and will be enforced on June 26, 2019 from 9:30 p.m. through 10:30 p.m.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into, transiting, or anchoring within this temporary safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or an on-scene representative.

(2) This temporary safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sault Sainte Marie or an on-scene representative.

(3) The “on-scene representative” of the Captain of the Port Sault Sainte Marie is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sault Sainte Marie to act on his or her behalf. The on-scene representative of the Captain of the Port Sault Sainte Marie will be aboard a Coast Guard vessel.

(4) Vessel Operators desiring to enter or operate within the temporary safety zone shall contact the Captain of the Port Sault Sainte Marie, or an on-scene representative to obtain permission to do so. The Captain of the Port Sault Sainte Marie or his on-scene representative may be contacted via VHF Channel 16 or at (906) 635-3237. Vessel operators given permission to enter or operate in the temporary safety zone must comply with all directions given to them by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

Dated: June 11, 2019.

P. S. Nelson,  
Captain, U.S. Coast Guard,  
Captain of the Port Sault Sainte Marie.

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